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MATTHEW GATREL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW GATREL,

Defendant.

Case No. 19-CR-36-JAK-1

**DEFENDANT MATTHEW
GATREL'S RESPONSE TO
GOVERNMENT'S OFFER OF
PROOF RE: EXPERTS**

1 **I. RESPONSE RE: DR. MCCOY**

2 Mr. Gatrel maintains his objection to the portion of Dr. McCoy's opinion which
3 relates to "the space occupied by 'booter' or 'stresser' services such as those operated by
4 the defendant in this matter - specifically how those paid subscription services operate;
5 the tiered pricing structure depending on the amount of attack power; and the fraudulent
6 use of amplification and spoofing techniques to appropriate the bandwidth and capacity of
7 innocent third-party servers to conduct those attacks." Dkt. 125 at 25-26. This opinion is
8 irrelevant.

9 As set forth in the Motion in Limine, Dkt. 101 at 5-6, how other services operate
10 is irrelevant to the issues before the jury in this matter. The offer of proof demonstrates
11 the government intends on eliciting testimony from Dr. McCoy about these other services
12 in order to paint Mr. Gatrel's conduct as being criminal because it bears similarities to
13 the conduct of others. But the appropriate focus of Dr. McCoy's opinion should be on
14 how the services the government contends Mr. Gatrel operated functioned. While experts
15 may consider (and, as necessary, disclose to the jury) inadmissible evidence in order to
16 reach an opinion, that opinion must be helpful to the jury. It is unclear how the
17 functioning of allegedly similar services materially advances an admissible opinion
18 centering on the two services that are the subject of the indictment. That is particularly
19 true where Dr. McCoy can -- and apparently intends to, based on the offer of proof --
20 testify about the two relevant services based on their comprehensive back-end databases,
21 customer communications, and FBI testing. *See* Dkt. 125 at 26. The offer of proof, which
22 essentially restates the expert disclosure in narrative form, does nothing to explain why
23 an analysis of irrelevant services will assist in a case-specific expert opinion.

24 Thus, introducing testimony regarding unrelated services will serve only to
25 confuse the jury, and Dr. McCoy should limit his testimony to Downthem and Ampnode-
26 specific issues.

1 **II. RESPONSE RE: MR. TZVETANOV**

2 Mr. Gatrel understands the offer of proof as representing that Mr. Tzvetanov will
3 testify regarding the effects of the relevant services, including the efficacy of certain
4 mitigation solutions. The government does not appear to plan to elicit testimony from
5 Mr. Tzvetanov regarding how DDoS functions generally, or how Downthem or
6 Ampnode functioned specifically. With that understanding, Mr. Gatrel does not believe
7 the testimony is cumulative.

8 Respectfully submitted,

9 CUAUHTEMOC ORTEGA
10 Federal Public Defender

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12 DATED: August 24, 2021

By /s/ Adam Olin
13 ADAM OLIN
14 CRAIG HARBAUGH
15 Deputy Federal Public Defenders
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